



## Amendment and Readoption of 326 IAC 2-10, Permit by Rule

#03-201(APCB)

### Overview

Amends 326 IAC 2-10-2 and 326 IAC 2-10-6 to update citations to the Indiana Code and readopts 326 IAC 2-10-1, 326 IAC 2-10-3, 326 IAC 2-10-4 and 326 IAC 2-10-5.

### Citations Affected

Readopts: 326 IAC 2-10-1; 326 IAC 2-10-3; 326 IAC 2-10-4; 326 IAC 2-10-5.

Amends: 326 IAC 2-10-2; 326 IAC 2-10-6.

### Affected Persons

Sources that are currently covered by a permit by rule under 326 IAC 2-10. These are sources that limit their actual emissions to below major source levels and that do not have a control device as an integral part of their process.

### Reasons for the Rule

The permit by rule was developed to minimize the regulatory burden and cost for both the regulated community and the department in the implementation of the permit requirements of Title V of the Clean Air Act Amendments of 1990 that resulted in development of the Part 70 Permit Program.

### Economic Impact of the Rule

If 326 IAC 2-10 is amended and readopted, there will be no economic impact on citizens, sources, or the department.

### Benefits of the Rule

If 326 IAC 2-10 is not readopted, sources now covered by a permit under this rule will be subject to one of the federally approved permit programs or state permit programs and will be required to obtain the applicable permit and pay the associated fees. There is no permit fee associated with the permit by rule under 326 IAC 2-10. In the absence of 326 IAC 2-10 sources that are now covered by 326 IAC

2-10 will need a permit under one of the following programs: 326 IAC 2-6.1, Minor Source Operating Permit Program; 326 IAC 2-7, Part 70 Permit Program; 326 IAC 2-8, Federally Enforceable State Operating Permit Program; or 326 IAC 2-9, Source Specific Operating Agreements, as applicable. There are fees associated with each of these permit programs.

### Description of the Rulemaking Project

In 1996 the Indiana Legislature provided for the expiration of certain administrative rules unless expressly readopted under IC 13-14-9.5 (the "sunset statute"). 326 IAC 2-10, permit by rule, is subject to IC 13-14-9.5. All rules adopted after December 31, 1995, expire on January first of the seventh year after the year in which the rule takes effect.

IC 13-14-9.5-4(a) provides that the department or board that has rulemaking authority under Title 13 may readopt all rules subject to expiration under one rule that lists all rules that are readopted by their titles and subtitles only.

IC 13-14-9.5-4(b) provides that if a person submits to the department or board that has rulemaking authority under Title 13, a written request and a basis for the request during the first comment period that a particular rule be readopted separately from the readoption rule described in subsection (a), the department or board must readopt the rule separately from the readoption rule and follow the procedure for adoption of administrative rules under IC 13-14-9 with respect to the rule.

326 IAC 2-10 was first noticed for readoption in the first sunset rulemaking (LSA #00-44). Because a request and a basis for the request were submitted during the first comment period for 326 IAC 2-10, this rule was not readopted in the first sunset rulemaking. IDEM requested public comment from

August 1, 2003 through September 1, 2003, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language in a single first notice of comment period for rules 326 IAC 2-10, permit by rule, and 326 IAC 2-11, permit by rule for specific source categories. IDEM received no comments specific to 326 IAC 2-10 in response to the first notice of public comment period. Comments were received addressed to 326 IAC 2-11. Therefore, the rulemaking has been split into two (2) separate rulemakings and the comments related to 326 IAC 2-11 will not be addressed in this rulemaking but will be addressed in rulemaking #03-201(2)(APCB).

326 IAC 2-10 applies to sources that limit their actual emissions below major source levels and do not have a control device as an integral part of their process. A source that meets the requirements of the rule is considered to be permitted under the rule. 326 IAC 2-10, sections 1 through 6, was adopted in 1996; section 1 of that rule was amended in 1998 and will expire on January 1, 2006. Sections 2 through 6 will expire on January 1, 2004.

The number of sources that are covered by this rule is not known since the rule provides that as long as a source can demonstrate compliance with the requirements of the rule, upon request, the source is covered by the permit by rule and is not required to notify or file any report with the department.

This rulemaking provides an opportunity for public comment and amendment or readoption of 326 IAC 2-10.

### **Scheduled Hearings**

First Public Hearing: December 3, 2003.

### **Consideration of Factors Outlined in Indiana Code 13-14-8-4**

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through

coordinated control of all factors affecting the quality.

6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:

(A) human, plant, animal, or aquatic life; or

(B) the reasonable enjoyment of life and property.

### **Consistency with Federal Requirements**

326 IAC 2-10, permit by rule, is not required by federal law and is not approved as part of the state implementation plan. However, in the absence of 326 IAC 2-10, sources now permitted under this rule would be subject to one of the federally approved permit programs or state permit programs and would be required to obtain the applicable permit and pay the associated fees.

### **Rulemaking Process**

The first step in the rulemaking process is a first notice published in the Indiana Register. This includes a discussion of issues and opens a first comment period. The second notice is then published which contains the comments and the department's responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The Air Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the Indiana Register after preliminary adoption along with a notice of second meeting/hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with the Secretary of State.

### **IDEM Contact**

Additional information regarding this rulemaking action can be obtained from Patricia Troth, Rule Development Section, Office of Air Quality, (317) 233-5681 or (800) 451-6027 (in Indiana).